

REMARKS

Reconsideration of the application is respectfully requested.

Interview Summary

The amendments made above are similar to ones proposed to the examiner during an interview between the undersigned representative and the examiner on April 11, 2011. Independent claim 11 was the focus of most of the discussion. Several of the other independent claims were very briefly discussed. No agreement was reached concerning claim 11. No agreement concerning the remaining claims was expressly made. However, based on the discussions, applicant's representative believes that amended independent claims 53 and 62 as proposed should be allowable.

The examiner seemed to indicate that prior art of record did not meet all of the limitations that applicants proposed to add to claim 11. However, he was concerned that certain proposed limitations should not be given patentable weight, and therefore indicated that he would likely maintain his rejection.

Claim Amendments

The amendments set forth above are generally similar to those proposed during the interview with the examiner. However, there have been some changes.

Applicability of Printed Matter Doctrine

The examiner raised, during the interview, the concern that at least some of the limitations added to claim 11, and similar ones added to some of the other claims, should not be accorded patentable weight under the printed matter doctrine. In addition to M.P.E.P. §2106, he pointed specifically to *In re Lowry*, 32 F. 3d 1579 (Fed Cir 1994) and several other cases.

Because the U.S.P.T.O is bound by the decisions of the Federal Circuit, and because the examiner appears to be familiar with the case law, applicants would like to offer a few comments on those cases in hopes to give context to the brief and, it is submitted, misleading treatment of the subject by the M.P.E.P.

In *Lowry*, the Court of Appeals for the Federal Circuit reversed the Board's determination that a data structure in a computer was analogous to printed matter, and made the following points.

1. The PTO may not disregard claim limitations comprised of printed matter. *Id.* at 1582, citing *Diamond v. Diehr*, 450 U.S. 175, 191, 101 S.Ct. 1048, 1059, 67 L.Ed.2d 155 (1981).
2. The court repeated the caution, first given in *In re Gulack*, 703 F.2d 1381 (1983), "against a liberal use of 'printed matter rejections' under section 103". The court explained that the printed matter cases concern claims defining "certain novel arrangements of printed lines or characters, useful and intelligible only to the human mind." *Id.* at 1583.
3. It stated that the printed matter cases have no factual relevance where "the invention as defined by the claims *requires* that the information be processed not by the mind but by a machine, the computer." *Id.*, citing *In re Bernhart*, 417 F.2d 1395, 1399, 163 USPQ 611, 615 (CCPA 1969).

In finding the claimed data structure is entitled patentable weight, the court in *Lowrey* pointed to the fact data structure was not merely recorded information, but had a structure that enabled better computer efficiency. *See, id.*, at 1583. No mention was made of a need to recite a computer or an application that was acting on the data structure. In other words the mere fact that the data structure, embedded in a memory, that was intended to be used by a program was enough.

In re Gulack, supra, concerned a band with printed matter — characters actually printed on the band, and not any type of computer data structure. The court explained that:

A "printed matter rejection" under § 103 stands on questionable legal and logical footing. Standing alone, the description of an element of the invention as printed matter tells nothing about the differences between the invention and the prior art or about whether that invention was suggested by the prior art.... [The Court of Customs and Patent Appeals], notably weary of reiterating this point, clearly stated that printed matter may well constitute structural limitations upon which patentability can be predicated.

Gulack, 703 F.2d at 1385, n. 8.

The court found that the printed matter on the band was functionally related to the band, and thus entitled to patentable weight.

The examiner mentioned a couple of other cases. *In re Ngai*, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004) appears to concern a "kit" containing written instructions for how to use it. This decision clearly involves printed matter that was to be read by a person when

using the kit. *Ex parte Mathias* and *Ex parte Curry* were informative, not precedential, decisions of the BPAI, and therefore, it is submitted, not binding.

Rejections

Claims 11 and 43

It is respectfully submitted that the limitations added by amendment to independent claims 11 and 43, if given patentable weight, clearly distinguish the prior art of record as none of the prior art of record discloses or suggests the combination of limitations as set forth. It is believed that the examiner indicated that they would if given patentable weight.

Applicants submit that all of the limitations in these claims must be accorded patentable weight. Storing on a computer the information for enabling contact with each of a plurality of licensors that is stored with parameters associated with each of the authorization codes is not printed subject matter, and it is not merely information being stored on the computer, as would be a piece of music or a text of document, with no other purpose. It is, rather, a structure on which a backup process running on the first computer acts during when sending the parameters. It enables the licensors to be contacted during restoration. The fact that another process or program, not included in the claim, must act upon this information in order to forward parameters to the respective licensor computers does not make it printed matter any more than the failure to recite a process that acts on Lowry's data structure made it printed matter.

Thus, it submitted that claims 11 and 43 are allowable.

Claims 34, 53 and 62

It is submitted that claim 34, which expressly recites a central management computer that sends only parameters associated with a first of at least two licensors to second computer associated with the first licensor and not sending to the second computers associated with any of the of the at least two licensors, clearly distinguishes over the art of record for at least the prior art does not appear to disclose or fairly teach such a limitation in combination with the other limitations in the claim.

Independent claim 53 expressly recites a back up process occurring on a first computer and a restoration process on a central management computer, and new claim 62 expressly recites a central management computer. It is respectfully submitted that claims 53 and 63 are clearly distinguishable over the prior art of record for at least reasons similar to why claim 34 is distinguishable.

Dependent claims

Because the independent claims are distinguishable over the art of record, it is submitted the dependent claims must also be.

In view of the above amendment, Applicant respectfully submits that the present application is in condition for allowance. A notice to that effect is respectfully requested.

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Respectfully submitted,

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